



ENVIRONMENTAL PROTECTION AGENCY

[Docket EPA-R02-OW-2022-0598; FRL 9850-02-R2]

Availability of Clean Water Act List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: This notice announces EPA's addition of certain water quality limited waters to the 2018 New York list of impaired waters, pursuant to the Clean Water Act (CWA), and requests public comment. The CWA and EPA's implementing regulations require States to submit, and EPA to approve or disapprove, lists of waters for which technology-based and other controls are not stringent enough to attain or maintain State water quality standards and for which total maximum daily loads (TMDLs) must be established. States are required to establish a priority ranking for waters on the list and to identify waters targeted for TMDL development over the next two years.

DATES: Comments must be submitted to EPA on or before [INSERT DATE 60 DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments, identified by Docket ID No. EPA-R02-OW-2022-0598, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the internet, cloud, or other

file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Gurdak at telephone (212) 637–3634 or by mail at Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007-1866.

SUPPLEMENTARY INFORMATION: New York submitted the 2018 New York CWA Section 303(d) list (New York 2018 303(d) list) to EPA in correspondence dated November 13th, 2020 (followed up by a correction on December 7th, 2020, and a supplement on February 10th, 2022). On March 10, 2022, EPA partially approved and partially disapproved the New York 2018 303(d) list. Specifically, EPA approved the New York 2018 303(d) list with respect to the 835 waterbody/pollutant combinations requiring TMDLs that New York included on the list and the State’s priority ranking for these waterbody/pollutant combinations.

However, EPA disapproved the New York 2018 303(d) list because EPA determined that it does not include twenty-two (22) waterbody/pollutant combinations that meet CWA Section 303(d) listing requirements.

For a detailed explanation of EPA’s partial approval/partial disapproval, please refer to EPA’s Support Document (<https://www.epa.gov/tmdl/new-yorkimpaired-waters-list>). EPA is providing the public the opportunity to review its decision to add these 22 waterbody/pollutant combinations to the New York 2018 303(d) list.

EPA is disapproving the New York 2018 303(d) list because EPA has determined that New York did not include twenty-two (22) waterbody/pollutant combinations on the 2018 303(d) list that meet 303(d) listing requirements, including:

- 17 waterbody/pollutant combinations that New York improperly delisted because data and information indicate that an applicable water quality standard is not met, including:
 - 4 waterbody/pollutant combinations where the applicable water quality criterion for odors is not met
 - 9 waterbody/pollutant combinations where data and/or information indicate that the applicable water quality criterion/criteria for floatables is/are not met.
 - 2 waterbody/pollutant combinations where the applicable water quality criterion for dissolved oxygen is not met
 - 1 waterbody/pollutant combination where data and/or information indicate the presence of harmful algal blooms (HABs), which in turn, indicates that an applicable water quality standard is not met.
 - 1 waterbody/pollutant combination for an assessment unit under 6.4 acres where data and/or information indicate that the applicable water quality criterion for dissolved oxygen is not met.
- 5 waterbody/pollutant combinations that New York did not include on the State's 2016 and/or 2018 303(d) lists, including:
 - 1 waterbody/pollutant combination that EPA listed on the New York 2014 303(d) list where data and/or information indicate that the applicable narrative water quality criterion for nutrients is not met.
 - 3 waterbody/pollutant combinations where data and information indicate the presence of HABs, which in turn, indicates that an applicable water quality standard is not met. New York did not demonstrate that no pollutant is causing the impairment of this water, did not include this

waterbody/pollutant combination on the 2018 303(d) list and
inappropriately categorized this waterbody/pollutant combination.

- 1 waterbody/pollutant combination where data and/or information indicate the presence of HABs, which in turn, indicates that an applicable water quality standard is not met. New York did not include this waterbody/pollutant combination on the 303(d) list or in any other category.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Javier Laureano,

Director, Water Division, Region II.

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